

House Bill 4004

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4004

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)

[By Request of the Executive]Delegates Name

[Month and DayPassed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §33-2-15b and §33-2-15c; to amend said code by adding thereto a new section, designated §33-2-20; to amend and reenact §33-6A-4 of said code; to amend said code by adding thereto three new sections, designated §33-6A-4a, §33-6A-4b and §33-6A-4c; to amend said code by adding thereto a new section, designated §33-22-2a; to amend said code by adding thereto a new section, designated §33-23-2a; to amend said code by adding thereto a new section, designated §33-24-4b; to amend said code by adding thereto a new section, designated §33-25-6a; to amend said code by adding thereto a new section, designated §33-25A-24b; to amend and reenact §33-41-1, §33-41-2 and §33-41-3 of said code; and to amend said code by adding thereto nine new sections, designated §33-41-4, §33-41-5, §33-41-6, §33-41-7, §33-41-8, §33-41-9, §33-41-10, §33-41-11 and §33-41-12, all relating to insurance generally; requiring the insurance commissioner to submit a report to the legislature on the impact of third party causes of actions on rates and availability and to make recommendations; authorizing the commissioner to request information from insurers; providing that certain information provided by insurers is not subject to disclosure; requiring the insurance commissioner to submit a report to the legislature on the office of the consumer advocate; requiring the commissioner to make recommendations regarding the office of the consumer advocate; permitting additional reasons for nonrenewal of automobile liability or physical damage policies; requiring the submission of withdrawal plans in certain instances; providing that a certain percentage of existing policies or any policies issued or renewed after the effective date of the bill may be nonrenewed by an insurer for any reason with proper notice to the insured; providing that a certain percentage of policies may be nonrenewed for underwriting reasons; allowing insurers to elect a method of nonrenewal; requiring renewal in certain instances when there are restrictive endorsements; authorizing the commissioner of insurance to act regarding withdrawal of insurers from the state; authorizing the commissioner to allow certain insurers to withdraw from the state; requiring insurers and the insurance commissioner to submit information regarding the impact of legislation on rates and availability; prevention and investigation of insurance fraud generally; subjecting farmers' mutual insurance companies, fraternal benefit societies, certain hospital, medical, dental and health services corporations, health care corporations, and health maintenance organizations to insurance fraud provisions; creating the West Virginia insurance fraud prevention act; legislative intent; defining terms; requiring fraud warning on forms; use of special assistant prosecutor; establishing an insurance fraud unit within agency of insurance commissioner; authorizing promulgation of rules; establishing powers and duties of the unit; establishing investigative powers and procedures; providing confidentiality of fraud unit records; immunity for providing information provided to law enforcement regarding fraud; exceptions; creating offense of insurance fraud; establishing penalties and fines; authorizing prosecution for insurance fraud; authorizing fraud unit attorneys to act as special prosecutors at request of county prosecutors; specifying duties of insurers; creating misdemeanor and felony offenses for the commission of fraudulent acts; creating civil penalties; granting authority to commissioner to administratively sanction regulated persons and insureds for violations of the article; and exceptions and immunities.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto two new sections designated § 33-2-15b and § 33- 2-15c; that said code be amended by adding thereto a new section, designated §33-2-20; that §33-6A-4 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §33-6A-4a, §33-6A-4b and §33-6A-4c; that said code be amended by adding thereto a new section, designated §33-22- 2a; that said code be amended by adding thereto a new section, designated §33-23-2a; that said code be amended by adding thereto a new section, designated §33-24-4b; that said code be amended by adding thereto a new section, designated §33-25-6a; that said code be amended by adding thereto a new section, designated §33-25A-24b; that §33-41-1, §33-41-2 and §33-41-3 of said code be amended and reenacted; and that said code be amended by adding thereto nine new sections, designated §33-41-4, §33-41-5, §33-41-6, §33-41-7, §33- 41-8, §33-41-9, §33-41-10, §33-41-11 and §33-41-12, all to read as follows:

CHAPTER 33. INSURANCE .

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-15b. Reports to the Legislature.

- (a) By the first of February, two thousand five, the commissioner shall submit to the Legislature a report on third party causes of action;
- (b) The report shall contain the following information:
 - (1) The legal history of the creation of a third party causes of action brought pursuant to Unfair Trade Practices Act as codified in article eleven of this chapter;
 - (2) An analysis of the impact of third party causes of action upon insurance rates and the availability of insurance in this state ;
 - (3) A summary of the types of data which the commissioner utilized in preparing the analysis: Provided, That the commissioner will not disclose information which is otherwise confidential: Provided, however, That if the commissioner is unable to obtain data which he or she considers necessary to preparing a full analysis, the commissioner shall state in the report:
 - (A) The reasons that he or she was not able to obtain the data;
 - (B) Recommendations or proposed legislation for facilitating the collection of necessary data and protecting proprietary information;
 - (4) Information on what other states have this cause of action;
 - (5) Based upon the findings of the commissioner, and if the findings so suggest, proposed legislation to address any reforms needed for third party claims under the Unfair Trade Practices Act;
- (c) For purpose of preparing the report, the commissioner may request from companies authorized to conduct business in this state any information that he or she believes is necessary to determine the economic effect of third-party lawsuits on insurance premiums. The companies shall not be required to provide the information. Any information which the company agrees to provide, shall be considered confidential by law and privileged, is exempt from disclosure pursuant to chapter twenty-nine-b of this code, is not open to public inspection, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any criminal, private civil or administrative action and is not subject to production pursuant to court order. Notwithstanding any other provisions in this section, while the commissioner is to provide his or her general conclusions based upon the review of the data, the commissioner is not to disclose the information in a manner so as to violate the confidentiality provisions of this section.

§33-2-15c. Reports to the Legislature

- (a) By the first of February, two thousand five, the commissioner shall submit to the Legislature a report relating to the office of the consumer advocate.
- (b) The report shall contain the following information:
 - (1) An overview of the function of the office of the consumer advocacy and how the office

addresses consumer complaints;

(2) The number of staff in the office of the consumer advocate and the structure of the existing office;

(3) Statistics reflecting the number of consumer complaints and types handled by the office from the first of January, two thousand one, until the first of January, two thousand four;

(4) The number of states which have consumer advocates and the lines of insurance for which the advocates are authorized to act on behalf of consumers;

(5) The recommendation of the commissioner in regard to whether this state would benefit by having the role of the consumer advocate expanded to other lines of insurance;

(6) Based upon the findings and recommendations, of the commissioner, and if the findings so suggest, proposed legislation for expanding the office of the consumer advocate to other lines of insurance.

§33-2-20. Authority of commission to allow withdrawal of insurance carriers from doing business in the state.

(a) Notwithstanding any provision of the code to the contrary, the commissioner may, consistent with the provisions of this section, authorize an insurer to withdraw from the line of automobile liability insurance for personal, private passenger automobiles covered by article six-a of this chapter, or from doing business entirely in this state if:

(1) The insurer has submitted and received approval from the commissioner of a withdrawal plan; and

(2) The insurer demonstrates to the satisfaction of the commissioner that allowing the insurer to withdraw would be in the best interest of the insurer, its policyholders and the citizens of this state.

(b) Any insurer that elects to nonrenew or cancel the particular type or line of insurance coverage provided for by section five, article seventeen-a of this chapter shall submit to the insurance commissioner a withdrawal plan for informational purposes only prior to cancellation or nonrenewal of all its business in this state.

(c) The commissioner shall promulgate rules pursuant to chapter twenty-nine-a of this code setting forth the criteria for withdrawal plans.

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-4. Advance notice of nonrenewal required; assigned risk policies; reasons for nonrenewal; hearing and review after nonrenewal.

(a) No insurer shall fail to renew an outstanding automobile liability or physical damage insurance policy unless the nonrenewal is preceded by at least forty-five days advance notice to the named insured of the insurer's election not to renew the policy: Provided, That subject to this section, nothing contained in this article shall be construed to prevent an insurer from refusing to issue an automobile liability or physical damage insurance policy upon application to the insurer, nor shall any provision of this article be construed to prevent an insurer from refusing to renew a policy upon expiration, except as to the notice requirements of this section, and except further as to those applicants lawfully submitted pursuant to the West Virginia assigned risk plan.

(b) An insurer may not fail to renew an outstanding automobile liability or physical damage insurance policy which has been in existence for two consecutive years or longer except for the following reasons:

(1) The named insured fails to make payments of premium for the policy or any installment of the premium when due;

(2) The policy is obtained through material misrepresentation;

(3) The insured violates any of the material terms and conditions of the policy;

(4) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy:

(A) Has had his or her operator's license suspended or revoked during the policy period; or
(B) Is or becomes subject to a physical or mental condition that prevents the insured from operating a motor vehicle, and the individual cannot produce a certificate from a physician testifying to his or her ability to operate a motor vehicle;

(5) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy, is convicted of or forfeits bail during the policy period for any of the following reasons:

(A) Any felony or assault involving the use of a motor vehicle;

(B) Negligent homicide arising out of the operation of a motor vehicle;

(C) Operating a motor vehicle while under the influence of intoxicating liquor or of any narcotic drug;

(D) Leaving the scene of a motor vehicle accident in which the insured is involved without reporting it as required by law;

(E) Theft of a motor vehicle or the unlawful taking of a motor vehicle; or

(F) Making false statements in an application for a motor vehicle operator's license;

(6) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy, is convicted of or forfeits bail during the policy period for two or more moving traffic violations committed within a period of twelve months, each of which results in three or more points being assessed on the driver's record by the division of motor vehicles, whether or not the insurer renewed the policy without knowledge of all of the violations: Provided, That an insurer that makes an election pursuant to section four-b of this article to issue all nonrenewal notices pursuant to this section, may nonrenew an automobile liability or physical damage insurance policy if the named insured, or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy is convicted of or forfeits bail during the policy period for two or more moving traffic violations committed within a period of twenty-four months, each of which occurs on or after the first day of July, two thousand four, and after the date that the insurer makes an election pursuant to section four-b of this article, and results in three or more points being assessed on the driver's record by the division of motor vehicles, whether or not the insurer renewed the policy without knowledge of all of the violations. Notice of any nonrenewal made pursuant to this subdivision shall be mailed to the named insured either during the current policy period or during the first full policy period following the date that the second moving traffic violation is recorded by the division of motor vehicles;

(7) The named insured or any other operator either residing in the same household or who customarily operates an automobile insured under the policy has had a second at-fault motor vehicle accident within a period of twelve months, whether or not the insurer renewed the policy without knowledge of all of the accidents: Provided, That an insurer that makes an election pursuant to section four-b of this article to issue all nonrenewal notices pursuant to this section, may nonrenew an automobile liability or physical damage insurance policy under this subsection if the named insured or any other operator either residing in the same household or who customarily operates an automobile insured under such policy has had two at-fault motor vehicle accidents within a period of thirty-six months, each of which occurs after the first day of July, two thousand four, and after the date that the insurer makes an election pursuant to section four-b of this article, and results in a claim paid by the insurer for each accident, whether or not the insurer renewed the policy without knowledge of all of the accidents. Notice of any nonrenewal made pursuant to this subsection shall be mailed to the named insured either during the current policy period or during the first full policy period following the date of the second accident; or

(8) The insurer ceases writing automobile liability or physical damage insurance policies throughout the state after submission to and approval by the commissioner of a withdrawal plan or discontinues operations within the state pursuant to a withdrawal plan approved by the commissioner.

(c) An insurer that makes an election pursuant to section four-b of this article to issue all nonrenewal notices pursuant to this section shall not fail to renew an automobile liability or physical damage insurance policy when an operator other than the named insured has violated the provisions of subdivision (6) or (7), subsection (b) of this section, if the named insured, by restrictive endorsement, specifically excludes the operator who violated the provision. An insurer issuing a nonrenewal notice informing the named insured that the policy will be nonrenewed for the reason that an operator has violated the provisions of subdivision (6) or (7), subsection (b) of this section, shall at that time inform the named insured of his or her option to specifically exclude the operator by restrictive endorsement and shall further inform the named insured that upon obtaining the restrictive endorsement, the insurer will renew the policy or rescind the nonrenewal absent the existence of any other basis for nonrenewal set forth in this section.

(d) A notice provided under this section shall state the specific reason or reasons for nonrenewal and shall advise the named insured that nonrenewal of the policy for any reason is subject to a hearing and review as provided for in section five of this article. Cost of the hearing shall be assessed against the losing party but shall not exceed seventy-five dollars. The notice must also advise the insured of possible eligibility for insurance through the West Virginia assigned risk plan.

(e) Notwithstanding the provisions of subsection (a) of this section, the insurer shall reinstate any automobile liability or physical damage insurance policy that has not been renewed due to the insured's failure to pay the renewal premium when due if:

- (1) None of the other grounds for nonrenewal as set forth in this section exist; and
- (2) The insured makes an application for reinstatement within forty-five days of the original expiration date of the policy. If a policy is reinstated as provided for in this paragraph, then the coverage afforded shall not be retroactive to the original expiration date of the policy: Provided, That such policy shall be effective on the reinstatement date at the current premium levels offered by the company and shall not be afforded the protections of this section relating to renewal of an outstanding automobile liability or physical damage insurance policy that has been in existence for at least two consecutive years.

§33-6A-4a. Alternative method for nonrenewal for automobile liability and physical damage insurance.

(a) On or after the first day of July, two thousand four, an insurer may nonrenew an automobile liability or physical damage insurance policy for any reason which is consistent with its underwriting standards.

(b) Notwithstanding any other provisions in this section, race, religion, nationality, ethnic group, age, sex, marital status, or other reason prohibited by the provisions of this chapter may not be considered as a reason for nonrenewal;

(c) Notwithstanding the provisions of section four of this article, a nonrenewal may only be issued pursuant to the provisions of this section upon forty-five days advance notice to the named insured of the insurer's election not to renew the policy.

(d) The total number of nonrenewal notices issued each year, commencing on the first day of July, two thousand four, by the insurer, resulting in nonrenewal, pursuant to this section may not exceed one percent per year of the total number of the policies of the insurer in force at the end of the previous calendar year in this state: Provided, That the total number of nonrenewal notices issued each year to insureds within any given county in this state resulting in nonrenewal may not exceed one percent per year of the total number of the policies of the insurer in force in that county at the end of the previous calendar year: Provided, however, That an insurer may nonrenew one policy per year in any county if the applicable percentage limitation results in less than one policy.

(e) A notice issued pursuant to this section shall state the specific reason or reasons for refusal to renew and shall advise the named insured that nonrenewal of the policy for any reason is subject to a hearing and review as provided for in section five of this article: Provided, That the hearing shall relate to whether the nonrenewal of the policy was issued

for a discriminatory reason, was based upon inadequate notice, an underwriting standard by the commissioner found to be in violation of this chapter or causes the insurer to exceed the percentage limitations, or percentage limitations by county, of nonrenewal notices set forth in this section. Cost of the hearing shall be assessed against the losing party but shall not exceed seventy-five dollars. The notice shall also advise the insured of possible eligibility for insurance through the West Virginia assigned risk plan.

(f) Each insurer licensed to write automobile liability and physical damage insurance policies in this state shall file with the commissioner a copy of its underwriting standards, including any amendments or supplements. The commissioner shall review and examine the underwriting standards to ensure that they are consistent with generally accepted underwriting principles. The underwriting standards filed with the commissioner shall be considered confidential by law and privileged, are exempt from disclosure pursuant to chapter twenty-nine-b of this code, are not open to public inspection, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any criminal, private civil or administrative action and are not subject to production pursuant to court order. The commissioner shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code to implement the provisions of this section.

(g) Each insurer that has elected to issue nonrenewal notices pursuant to the percentage limitations provided in this section shall report to the commissioner, on a form prescribed by the commissioner, on or before the thirtieth day of September of each year the total number of nonrenewal notices issued in this state and in each county of this state for the preceding year. The insurer shall also report to the commissioner the specific reason or reasons for the nonrenewals by county which have been issued pursuant to this section.

§33-6A-4b. Manner of making election relating to nonrenewals.

(a) Each insurer licensed to write automobile liability or physical damage insurance policies in this state, as of the first day of July, two thousand four, may elect to issue all nonrenewal notices either pursuant to section four or section four-a of this article. Each insurer may notify the commissioner of its election any time after the first day of July, two thousand four, and shall remain bound by the election for a period of five years. For each subsequent five-year period each insurer shall notify the commissioner of its election to issue all nonrenewal notices either pursuant to section four or section four-a of this article.

(1) If no election is made by the first day of July, two thousand four, then, until the first day of July, two thousand five, the insurer shall continue to issue all nonrenewal notices pursuant to the existing nonrenewal provisions in section four prior to the amendments enacted therein by the acts of the Seventy-Sixth Legislature during the second session, two thousand four.

(2) As of the first day of July, two thousand five, each insurer licensed to write automobile liability or physical damage insurance policies in this state, and that has not previously made an election under this section, shall elect to issue all nonrenewal notices either pursuant to section four or section four-a of this article. Each insurer which has not previously made an election must notify the commissioner of its election no later than the first day of July, two thousand five, and shall remain bound by the election for a period of five years. For each subsequent five-year period each insurer shall notify the commissioner of its election to issue all nonrenewal notices either pursuant to section four or section four-a of this article.

(b) An insurer that is not licensed to write automobile liability or physical damage insurance policies in this state, as of the first day of July, two thousand four, but becomes licensed to write such policies after that date shall, no later than two years after the date the insurer becomes licensed to write such policies, make an election to issue all nonrenewal notices either pursuant to section four or section four-a of this article, and shall notify the commissioner of its election. If the insurer elects to issue all nonrenewal notices pursuant to section four-a of this article, the total number of nonrenewals may not exceed the percentage limitations set forth in section four-a of this article. An insurer first becoming licensed to issue automobile liability and physical damage insurance policies in this state after the first day of July, two thousand four, shall be bound by its election for a period of five years, and for each

subsequent five-year period shall notify the commissioner of its election to issue all nonrenewal notices either pursuant to section four or section four-a of this article.

(c) Notwithstanding any provision of this article to the contrary, a named insured by restrictive endorsement may specifically exclude from automobile liability or physical damage insurance policy an operator who has violated the provisions of subdivision (6) or (7), subsection (b), section four of this article.

§33-6A-4c. Report to the Legislature.

By the first day of January, two thousand nine, the commissioner shall submit a report to the Legislature. The report shall contain the following:

(1) An analysis of the impact of legislation enacted during the two thousand four legislative session upon rates and insurance availability in the state;

(2) Statistics reflecting the rate history of insurers conducting business in West Virginia from the first day of July, two thousand four, until the first day of July, two thousand eight.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

§33-22-2a. Applicability of insurance fraud prevention act.

Notwithstanding any provision of this code to the contrary, article forty-one of this chapter is applicable to farmers' mutual fire insurance companies. ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-2a. Applicability of insurance fraud prevention act.

Notwithstanding any provision of this code to the contrary, article forty-one of this chapter is applicable to fraternal benefit societies.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-4b. Applicability of insurance fraud prevention act .

Notwithstanding any provision of this code to the contrary, article forty-one of this chapter is applicable to hospital service corporations, medical service corporations, dental service corporations and health service corporations.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-6a. Applicability of insurance fraud prevention act .

Notwithstanding any provision of this code to the contrary, article forty-one of this chapter is applicable to health care corporations.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-24b. Applicability of insurance fraud prevention act.

Notwithstanding any provision of this code to the contrary, article forty-one of this chapter is applicable to health maintenance organizations.

ARTICLE 41. INSURANCE FRAUD PREVENTION ACT.

§33-41-1. Short title; legislative findings and purpose.

(a) This article may be cited as the "West Virginia Insurance Fraud Prevention Act".

(b) The Legislature finds that the business of insurance involves many transactions of numerous types that have potential for fraud and other illegal activities. This article is intended to permit use of the expertise of the commissioner to investigate and help prosecute insurance fraud and other crimes related to the business of insurance more effectively, and to assist and receive assistance from state, local and federal law-enforcement and regulatory agencies in enforcing laws prohibiting crimes relating to the business of insurance.

§33-41-2. Definitions.

As used in this article:

(1) "Benefits" mean money payments, goods, services or other thing of value paid in response to a claim filed with an insurer based upon a policy of insurance;

(2) "Business of insurance" means the writing of insurance or the reinsuring of risks by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and the

activities of persons who act as or are officers, directors, agents or employees of insurers, or who are other persons authorized to act on their behalf;

(3) "Claim" means an application or request for payment or benefits provided under the terms of a policy of insurance;

(4) "Commissioner" means the insurance commissioner of West Virginia or his or her designee;

(5) "Health care provider" means a person, partnership, corporation, facility or institution licensed by, or certified in, this state or another state, to provide health care or professional health care services, including, but not limited to, a physician, osteopathic physician, hospital, dentist, registered or licensed practical nurse, optometrist, pharmacist, podiatrist, chiropractor, physical therapist or psychologist;

(6) "Insurance" means a contract or arrangement in which a person undertakes to:

(A) Pay or indemnify another person as to loss from certain contingencies called "risks," including through reinsurance;

(B) Pay or grant a specified amount or determinable benefit to another person in connection with ascertainable risk contingencies;

(C) Pay an annuity to another person; or

(D) Act as surety.

(7) "Insurer" means a person entering into arrangements or contracts of insurance or reinsurance. Insurer includes, but is not limited to, any domestic or foreign stock company, mutual company, mutual protective association, farmers' mutual fire companies, fraternal benefit society, reciprocal or interinsurance exchange, nonprofit medical care corporation, nonprofit health care corporation, nonprofit hospital service association, nonprofit dental care corporation, health maintenance organization, captive insurance company, risk retention group or other insurer, regardless of the type of coverage written, benefits provided or guarantees made by each. A person is an insurer regardless of whether the person is acting in violation of laws requiring a certificate of authority or regardless of whether the person denies being an insurer;

(8) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, trustees, an unincorporated organization, or any similar business entity or any combination of the foregoing. "Person" also includes hospital service corporations, medical service corporations and dental service corporations as defined in article twenty-four of this chapter, health care corporations as defined in article twenty-five of this chapter, or a health maintenance organization organized pursuant to article twenty-five-a of this chapter;

(9) "Policy" means an individual or group policy, group certificate, contract or arrangement of insurance or reinsurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state;

(10) "Reinsurance" means a contract, binder of coverage (including placement slip) or arrangement under which an insurer procures insurance for itself in another insurer as to all or part of an insurance risk of the originating insurer;

(11) "Statement" means any written or oral representation made to any person, insurer or authorized agency. A statement includes, but is not limited to, any oral report or representation; any insurance application, policy, notice or statement; any proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, or other evidence of loss, injury or expense; any bill for services, diagnosis, prescription, hospital or doctor record, X ray, test result or other evidence of treatment, services or expense; and any application, report, actuarial study, rate request or other document submitted or required to be submitted to any authorized agency. A statement also includes any written or oral representation recorded by electronic or other media; and

(12) "Unit" means the insurance fraud unit established pursuant to the provisions of this

article acting collectively or by its duly authorized representatives.

§33-41-3. Fraud warning authorized; statement required of nonadmitted insurers.

(a) Claims forms and applications for insurance, regardless of the form of transmission, may contain the following warning or a substantially similar caveat:

"Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison."

(b) The lack of a warning as authorized by the provisions of subsection (a) of this section does not constitute a defense in any prosecution for a fraudulent or illegal act nor shall it constitute the basis for any type of civil cause of action.

(c) Policies issued by nonadmitted insurers pursuant to article twelve-c of this chapter shall contain a statement disclosing the status of the insurer to do business in the state where the policy is delivered or issued for delivery or the state where coverage is in force. The requirement of this subsection may be satisfied by a disclosure specifically required by section five, article twelve-c of this chapter; section nine, article thirty-two of this chapter; and section eighteen, article thirty-two of this chapter.

§33-41-4. Authority of the commissioner; use of special assistant prosecutors.

(a) The commissioner may investigate suspected criminal acts relating to the business of insurance as authorized by the provisions of this article.

(b) If the prosecuting attorney of the county in which a criminal violation relating to the business of insurance occurs determines that his or her office is unable to take appropriate action, he or she may petition the appropriate circuit court for the appointment of a special prosecutor or special assistant prosecutor from the West Virginia Prosecuting Attorney Institute pursuant to the provisions of section six, article four, chapter seven of this code. Notwithstanding the provisions of that section, attorneys employed by the commissioner and assigned to the insurance fraud unit created by the provisions of section eight of this article may prosecute or assist in the prosecution of violations of the criminal laws of this state related to the business of insurance and may act as special prosecutors or special assistant prosecutors in those cases if assistance is sought by the prosecuting attorney or special prosecutor assigned by the institute to prosecute those matters.

(c) Funds allocated for insurance fraud prevention may be dispersed by the commissioner, at his or her discretion, for the purpose of insurance fraud enforcement as authorized by the provisions of this code.

(d) The Insurance Fraud Unit authorized by the provisions of section eight of this article may assist federal law-enforcement agencies, the West Virginia state police, the state fire marshal, municipal police departments and the sheriffs of the counties in West Virginia in investigating crimes related to the business of insurance.

(e) The commissioner may conduct public outreach, education, and awareness programs on the costs of insurance fraud to the public.

§33-41-5. Reporting of insurance fraud or criminal offenses otherwise related to the business of insurance.

(a) A person engaged in the business of insurance having knowledge or a reasonable belief that fraud or another crime related to the business of insurance is being, will be or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(b) The commissioner may prescribe a reporting form to facilitate reporting of possible fraud or other offenses related to the business of insurance for use by persons other than those persons referred to in subsection (a) of this section.

§33-41-6. Immunity from liability.

(a) There shall be no civil liability imposed on and no cause of action shall arise from a

person's furnishing information concerning suspected or anticipated fraud relating to the business of insurance, if the information is provided to or received from:

- (1) The commissioner or the commissioner's employees, agents or representatives;
- (2) Federal, state, or local law-enforcement or regulatory officials or their employees, agents or representatives;
- (3) A person involved in the prevention and detection of insurance fraud or that person's agents, employees or representatives; or
- (4) The national association of insurance commissioners or its employees, agents or representatives.

(b) The provisions of subsection (a) of this section are not applicable to materially incorrect statements made maliciously or fraudulently by a person designated a mandated reporter pursuant to the provisions of subsection (a), section five of this article or made in reckless disregard to the truth or falsity of the statement by those not mandated to report. In an action brought against a person for filing a report or furnishing other information concerning an alleged insurance fraud, the party bringing the action shall plead with specificity any facts supporting the allegation that subsection (a) of this section does not apply because the person filing the report or furnishing the incorrect information did so maliciously in the case of a mandated reporter or in the case of a person not designated a mandated reporter, in reckless disregard for the truth or falsity of the statement.

(c) Nothing in this article shall be construed to limit, abrogate or modify existing statutes or case law applicable to the duties or liabilities of insurers regarding bad faith or unfair trade practices.

(d) This section does not abrogate or modify common law or statutory privileges or immunities.

§33-41-7. Confidentiality.

(a) Documents, materials or other information in the possession or control of the office of the insurance commissioner that are provided pursuant to section six of this article or obtained by the commissioner in an investigation of alleged fraudulent acts related to the business of insurance shall be confidential by law and privileged, shall not be subject to the provisions of chapter twenty-nine-b of this code, shall not be open to public inspection, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner may use the documents, materials or other information if they are required for evidence in criminal proceedings or other action by the state or federal government and in such context may be discoverable as ordered by a court of competent jurisdiction exercising its discretion.

(b) Neither the commissioner nor any person who receives documents, materials or other information while acting under the authority of the commissioner may be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (a) of this section except as ordered by a court of competent jurisdiction.

(c) In order to assist in the performance of the commissioner's duties, the commissioner:

- (1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (a) of this section with other state, federal and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with local, state, federal and international law-enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;
- (2) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the national association of insurance commissioners and its affiliates and subsidiaries, and from regulatory and law-enforcement officers of other foreign or domestic jurisdictions, and shall maintain as confidential or

privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(3) May enter into agreements governing sharing and use of information including the furtherance of any regulatory or legal action brought as part of the recipient's official duties.

(d) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (c) of this section.

(e) Nothing in this section shall prohibit the commissioner from providing information to or receiving information from any local, state, federal or international law-enforcement authorities, including any prosecuting authority; or from complying with subpoenas or other lawful process in criminal actions; or as may otherwise be provided in this article.

(f) Nothing in this article may be construed to abrogate or limit the attorney-client or work product privileges existing at common law or established by statute or court rule.

§33-41-8. Creation of insurance fraud unit; purpose; duties; personnel qualifications.

(a) There is established the West Virginia insurance fraud unit within the office of the insurance commissioner of West Virginia. The commissioner may employ full-time supervisory, legal and investigative personnel for the unit, who shall be qualified by training and experience in the areas of detection, investigation or prosecution of fraud within and against the insurance industry to perform the duties of their positions. The director of the fraud unit shall be a full-time position and shall be appointed by the commissioner and serve at his or her will and pleasure. The commissioner shall provide office space, equipment, supplies, clerical and other staff that is necessary for the unit to carry out its duties and responsibilities under this article.

(b) The fraud unit may in its discretion:

(1) Initiate inquiries and conduct investigations when the unit has cause to believe violations of the provisions of this chapter or the provisions of article three, chapter sixty-one of this code relating to the business of insurance have been or are being committed;

(2) Review reports or complaints of alleged fraud related to the business of insurance activities from federal, state and local law-enforcement and regulatory agencies, persons engaged in the business of insurance and the general public to determine whether the reports require further investigation; and

(3) Conduct independent examinations of alleged fraudulent activity related to the business of insurance and undertake independent studies to determine the extent of fraudulent insurance acts.

(c) The insurance fraud unit may:

(1) Employ and train personnel to achieve the purposes of this article and to employ legal counsel, investigators, auditors and clerical support personnel and other personnel as the commissioner determines necessary from time to time to accomplish the purposes of this article;

(2) Inspect, copy or collect records and evidence;

(3) Serve subpoenas issued by grand juries and trial courts in criminal matters;

(4) Share records and evidence with federal, state or local law-enforcement or regulatory agencies, and enter into interagency agreements;

(5) Make criminal referrals to the county prosecutors;

(6) Conduct investigations outside this state. If the information the insurance fraud unit seeks to obtain is located outside this state, the person from whom the information is sought may make the information available to the insurance fraud unit to examine at the place where the information is located. The insurance fraud unit may designate representatives, including officials of the state in which the matter is located, to inspect the information on behalf of the insurance fraud unit, and the insurance fraud unit may respond to similar requests from officials of other states;

(7) The fraud unit may initiate investigations and participate in the development of, and if necessary, the prosecution of any health care provider, including a provider of rehabilitation services, suspected of fraudulent activity related to the business of insurance;

(8) Specific personnel, designated by the commissioner, shall be permitted to operate vehicles owned or leased for the state displaying Class A registration plates;

(9) Notwithstanding any provision of this code to the contrary, specific personnel designated by the commissioner may carry firearms in the course of their official duties after meeting specialized qualifications established by the governor's committee on crime, delinquency and correction, which shall include the successful completion of handgun training provided to law-enforcement officers by the West Virginia state police: Provided, That nothing in this subsection shall be construed to include any person designated by the commissioner as a law-enforcement officer as that term is defined by the provisions of section one, article twenty-nine, chapter thirty of this code; and

(10) The insurance fraud unit shall not be subject to the provisions of article nine-a, chapter six of this code and the investigations conducted by the insurance fraud unit and the materials placed in the files of the unit as a result of any such investigation are exempt from public disclosure under the provisions of chapter twenty-nine-b of this code.

§33-41-9. Other law-enforcement or regulatory authority.

This article does not:

(1) Preempt the authority or relieve the duty of other law-enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;

(2) Prevent or prohibit a person from disclosing voluntarily information concerning insurance fraud to a law-enforcement or regulatory agency other than the insurance fraud unit; or

(3) Limit the powers granted elsewhere by the laws of this state to the commissioner or his or her agents to investigate and examine possible violations of law and to take appropriate action against violators of law.

§33-41-10. Rules .

The insurance commissioner shall, pursuant to the provisions of article three, chapter twenty-nine-a of this code, promulgate such legislative rules as are necessary or proper to carry out the purposes of this article.

§33-41-11. Fraudulent claims to insurance companies.

(a) Any person who knowingly and willfully and with intent to defraud submits a materially false statement in support of a claim for insurance benefits or payment pursuant to a policy of insurance or who conspires to do so is guilty of a crime and is subject to the penalties set forth in the provisions of this section.

(b) Any person who commits a violation of the provisions of subsection (a) of this section, where the benefit sought exceeds one thousand dollars in value, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one nor more than ten years, fined not more than ten thousand dollars, or both, or in the discretion of the circuit court, confined in a county or regional jail for not more than one year and so fined.

(c) Any person who commits a violation of the provisions of subsection (a) of this section where the benefit sought is one thousand dollars or less in value, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for not more than one year, fined not more than two thousand five hundred dollars, or both.

(d) Any person convicted of a violation of this section is subject to the restitution provisions of article eleven-a, chapter sixty-one of this code.

(e) The circuit court may award to the unit or other law- enforcement agency investigating a violation of this section or other criminal offense related to the business of insurance its cost of investigation.

§33-41-12. Civil penalties; injunctive relief; employment disqualification.

A person or entity engaged in the business of insurance or a person or entity making a claim against an insurer who violates any provision of this article may be subject to the following:

(1) Where applicable, suspension or revocation of license or certificate of authority or a civil penalty of up to ten thousand dollars per violation, or where applicable, both. Suspension or revocation of license or certificate of authority or imposition of civil penalties may be pursuant to an order of the commissioner issued pursuant to the provisions of section thirteen, article two of this chapter. The commissioner's order may require a person found to be in violation of this article to make reasonable restitution to persons aggrieved by violations of this article. The commissioner may assess a person sanctioned pursuant to the provisions of this section the cost of investigation;

(2) Notwithstanding any other provision of law, a civil penalty imposed pursuant to the provisions of this section is mandatory and not subject to suspension;

(3) A person convicted of a felony violation law reasonably related to the business of insurance shall be disqualified from engaging in the business of insurance; and

(4) The commissioner may apply for a temporary or permanent injunction in any appropriate circuit court of this state seeking to enjoin and restrain a person from violating or continuing to violate the provisions of this article or rule promulgated under this article, notwithstanding the existence of other remedies at law. The circuit court shall have jurisdiction of the proceeding and have the power to make and enter an order or judgment awarding temporary or permanent injunctive relief restraining any person from violating or continuing to violate any provision of this article or rule promulgated under the article as in its judgment is proper.